EMINENT DOMAIN — WHEN IS PROPERTY TAKEN — GRADE OF STREET CHANGED BY RAILROAD. — In raising the grade of its roadbed, the defendant railroad company was required by a city ordinance to make the necessary alterations in the grade of streets crossed by the railroad, as directed by the city engineer. The grade of the street in front of the plaintiff's property was raised. *Held*, that she is entitled to compensation for damage to her right of access. *Pittsburg, C., C. & St. L. Ry. Co.* v. *Atkinson*, 97 N. E. 353 (Ind., App. Ct.).

The alteration of street grades for street purposes gives abutters no claim to compensation. *Callender* v. *Marsh*, 1 Pick. (Mass.) 418. See 1 LEWIS, EMINENT DOMAIN, 3 ed., §§ 133, 134, 137. It is otherwise if the street is modified to serve as a dike or furnish materials for another street. *City of Shawneetown* v. *Mason*, 82 Ill. 337; *Mayor, etc. of Macon* v. *Hill*, 58 Ga. 595. Raising an approach for an ordinary bridge is a street purpose. *Willis* v. *Winona City*, 59 Minn. 27, 60 N. W. 814; *Willets Mfg. Co.* v. *Board of Chosen Freeholders*, 62 N. J. L. 95, 40 Atl. 782. Elevating one for private accommodation is not. *Ranson* v. *City of Sault Ste. Marie*, 143 Mich. 661, 107 N. W. 439. But a street purpose does not cease to be such because a corporation is required to execute it. *Chicago, etc. Ry. Co.* v. *Johnson*, 45 Ind. App. 162, 90 N. E. 507; *Conklin* v. *New York, etc. Ry. Co.*, 102 N. Y. 107, 6 N. E. 663. Accordingly, many courts deny damages for changes in grade through the construction of a railroad crossing. *Rauenstein* v. *New York, etc. Ry. Co.*, 136 N. Y. 528, 32 N. E. 1047; *Atchison, etc. R. Co.* v. *Arnold*, 52 Kan. 729, 35 Pac. 780. Certainly there is no less a street after the change. *City of New Haven* v. *New York & New Haven R. Co.*, 39 Conn. 128; *Louisville Steam Forge Co.* v. *Mehler*, 112 Ky. 438, 64 S. W. 652. Yet, since the necessity is for the accommodation of a distinct line of travel, not for any additional utility in the street itself, the better opinion and the probable weight of authority support the principal case. *Buchner* v. *Chicago, etc. Ry. Co.*, 56 Wis. 403, 60 Wis. 264, 14 N. W. 273, 19 N. W. 56; *Perrine* v. *Pennsylvania R. Co.*, 72 N. J. L. 398, 61 Atl. 87. The doctrine extends to all subsequent improvements necessary to preserve the utility of a preëxisting street. *Burritt* v. *City of New Haven*, 42 Conn. 174. In the construction of a new street, however, a crossing would seem to be a necessary part. *Cf. Northern Central Ry. Co.* v. *Mayor, etc. of Baltimore*, 46 Md. 425; *City of Chester* v. *Philadelphia, etc. R. Co.*, 3 Walk. (Pa.) 368. If so, its subsequent alteration apparently involves no new burden on adjoining land. *Contra, Egbert* v. *Lake Shore, etc. Ry. Co.*, 6 Ind. App. 350, 33 N. E. 659.

EXECUTORS AND ADMINISTRATORS — RIGHTS, POWERS, AND DUTIES — ACCOUNTABILITY FOR ACQUISITIONS FROM LEGATEE. — Before legacies were payable, after a legatee had given him a power of attorney to pledge or assign her legacy of $2381.25 for $2000, the executor advanced that sum to her from his own money. When he discharged the legacy she returned the balance in recognition of the accommodation. *Held*, that the executor is liable to account to the estate for the balance, minus legal interest on the amount loaned. *Matter of De Vany*, 147 N. Y. App. Div. 494, 132 N. Y. Supp. 582.

Like other fiduciaries, an executor is not allowed to transfer to himself any interest in the estate. *Michoud* v. *Girod*, 4 How. (U. S.) 503. Such transactions, however, are not void, but voidable by the beneficiaries. *Den d. Hance* v. *McKnight*, 11 N. J. L. 385; *Remick* v. *Butterfield*, 31 N. H. 70. A purchase directly from an individual beneficiary cannot be avoided if the executor sustains the burden of proving the transaction equitable. *State ex rel. Jones* v. *Jones*, 131 Mo. 194, 33 S. W. 23. *Cf. Brown* v. *Cowell*, 116 Mass. 461. See 1 PERRY, TRUSTS AND TRUSTEES, 6 ed., § 205. In any event, the other beneficiaries cannot avoid it. See *Clark* v. *Jacobs*, 56 How. Pr. (N. Y.) 519, 522. But cases confuse this with the question whether they can hold the executor

as constructive trustee. *Peyton* v. *Smith*, 22 N. C. 325; *Hale* v. *Aaron*, 77 N. C. 371. They cannot, against the right of the vendor to avoid. *Barton* v. *Hassard*, 3 Dr. & War. 461. But, irrespective of actual fraud, the danger in a conflict of interest requires that all profits from discounting the claims of creditors should accrue to the estate. *Woods* v. *Irwin*, 163 Pa. St. 413, 30 Atl. 232; *Cox* v. *John*, 32 Oh. St. 532. The executor is equally acting within his duties and under the advantage of his official knowledge when buying at a discount the claims of legatees. *Lovett* v. *Morey*, 66 N. H. 273, 20 Atl. 283. There seems to be no reason for a different rule. *Contra*, *Peyton* v. *Smith*, *supra*; *Hale* v. *Aaron*, *supra*. Finding that the transaction was not a gift but a payment on account of the advancement, the court in the principal case probably reached the correct result.

INSURANCE — FIDELITY INSURANCE — VARIATION OF RISK. — A bond executed by the defendant to secure the plaintiff bank against loss incurred through employing X. as assistant cashier contained a provision "that the employé can perform other duties than those properly belonging to the position mentioned . . . without notice . . . to the company." After the bond was executed, X. acquired a majority of the stock of the bank, and became a director and cashier. He then defaulted. *Held*, that the defendant is discharged from liability on the bond. *Farmers' & Merchants' State Bank* v. *United States Fidelity & Guaranty Co.*, 133 N. W. 247 (S. D.).

The equitable defense based on variation of risk by reason of a material change in the employee's duties is waived in this case by the clause in the bond. *Fidelity and Casualty Co.* v. *Gate City National Bank*, 97 Ga. 634, 25 S. E. 392; *Champion Ice, etc. Co.* v. *American Bonding & Trust Co.*, 115 Ky. 863, 75 S. W. 197. *Contra*, *National Mechanics' Banking Association* v. *Conkling*, 90 N. Y. 116. The contract of insurance is a personal one. See FROST, GUARANTY INSURANCE, 2 ed., § 113 (E). A change in the personality of the insured, a change in partnership, or from a partnership to a corporation, would give a defense. *Dance* v. *Girdler*, 1 B. & P. N. 34; *Dry* v. *Davy*, 10 A. & E. 30. But though the membership of a corporation is always changing, the corporation remains the same. *Cf. London, etc. Ry. Co.* v. *Goodwin*, 3 Exch. 320. The majority of the court rest their decision on the ground that the subsequent acquisition of a majority of the stock by the employee brought about a situation not contemplated by the parties, in which it would be unconscionable to continue to hold the surety to his legal obligation without giving notice. No cases have been found to support the decision. Where the risk is increased through no act of the obligee, the cases go no further than to give a defense when the employee is retained in service after knowledge of his dishonesty. *Phillips* v. *Foxall*, L. R. 7 Q. B. 666; *Watertown Fire Ins. Co.* v. *Simmons*, 131 Mass. 85. It is submitted that the facts of the principal case do not warrant a further imposition of affirmative duties on the insured.

INTERSTATE COMMERCE — INTERSTATE COMMERCE COMMISSION — POWER TO DENY REPARATION ON GROUND OF LACHES. — A shipper sought reparation through the Interstate Commerce Commission for excessive freight charges. The commission found that the rate charged was unreasonable, but denied relief for all charges previous to the filing of the complaint on the ground of laches. *Held*, that it cannot deny relief on such a ground. *Russe* v. *Interstate Commerce Commission*, U. S. Commerce Ct., Feb. 13, 1912.

The Interstate Commerce Commission derives all its powers from the Interstate Commerce Act of 1887 and its supplements, and can exercise no powers which are not given it thereby. See BEALE & WYMAN, RAILROAD RATE REGULATION, § 1034. In considering a complaint its sole consideration must be whether or not the situation which the carriers have created violates that act.